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Superfund Records Center

FILE: LEEDS METAL

FILE: 1013

FILE: 496575

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

CERTIFIED NO. P 424 249 625

October 6, 2000

Harry E. Zaitlin
198 NW 67th Street
Boca Raton, Florida 33487

Dear Mr. Zaitlin:

**NOTICE OF POTENTIAL LIABILITY AND
REQUEST FOR PARTICIPATION IN CLEANUP ACTIVITIES AND
REQUEST FOR INFORMATION**

This Letter serves to notify you of your potential liability with respect to the Leeds Metal Site in Leeds, Maine, and seeks your voluntary participation in undertaking cleanup activities at the Site. This letter also requires you to provide information regarding your operations at this Site.

BACKGROUND

The Leeds Metal Site ("Site") is located on a 36-acre parcel identified on the Town of Leeds Tax Map 4 as Lot 38. The Site is bounded on the east by the tracks of the Maine Central Railroad ("MRCC"). To the north of the Site is located an active sand, gravel and concrete facility run by Blue Rock Industries. State Route 106 runs on the west side of the Site. There are wetlands on the southern side of the Site.

MCRR or its predecessors have owned the Site for over a century. A railroad sidetrack has been located on the Site since at least 1956. Since 1956 a variety of businesses have leased the Site from the MCRR and transported materials to and from the Site via the railroad.

Prior to 1969 the Site was mined for sand and gravel and was known as Libby's Pit. In 1969, MCRR entered into a 10-year lease with National Metal Converters, Inc., a Maine corporation ("NMC"). This lease authorized NMC to erect and maintain buildings, machinery and other structures on the Site and to process scrap ferrous metals on the site.



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From approximately 1970 into 1976, NMC operated an automobile shredding plant on the Site which separated ferrous metals from other metals and nonmetallic portions of automobiles (known as "fluff"), as well as batteries, tires, gas tanks, radiators and wheels. The ferrous metals were then shipped offsite. The lease required NMC to ship via rail at least 100 gross tons/day of ferrous metals from the Site.

From 1976 to 1978, Michael Schiavone and Sons, Inc. ("Schiavone") operated an automobile shredding plant on Site pursuant to a sublease with NMC. From 1978 to 1980, Philip Lucas, Jr. d/b/a Lucas Salvage Company operated a scrap metal recovery facility on the Site as a tenant of Schiavone.

In 1980, Stephen Erb d/b/a Leeds Metal ("Leeds Metal") acquired the assets of Schiavone and operated a scrap metal recovery facility on the Site. Leeds Metal collected scrap metal and other materials from International Paper Company, Boise Cascade and other businesses. Leeds Metal terminated operations on the Site in 1982. William Morgan III operated a scrap metal recovery facility on the Site for a portion of 1984.

Contamination has been documented at the Site. Under a cooperative agreement with United States Environmental Protection Agency ("USEPA"), the Maine Department of Environmental Protection ("MEDEP" or "Department") Site assessment staff conducted a preliminary investigation of the contamination at the former Leeds Metal Site. Surficial soil sampling (within the top eight inches) detected lead concentrations as high as 12,000 mg/kg, diesel range organics ("DRO") at 80,800 mg/kg, PCB's at 16.1 mg/kg, as well as arsenic, chromium, cadmium and barium. Subsequent investigations conducted by ERM, consultant to MCRR, documented tetrachloroethene ("TCE") in groundwater exceeding federal and state drinking water standards. The results of the recent residential well sampling detected trace levels of solvents suggesting offsite migration of contaminants in the bedrock. All of the contaminants identified above, lead, DRO, PCB's, TCE, arsenic, chromium, cadmium and barium, are hazardous substances as that term is defined at 38 M.R.S.A. § 1362.

Under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371, the MEDEP is authorized to investigate and to clean up sites, like the Leeds Metal Site, at which hazardous substances have come to be located and to clean up or mitigate threats or hazards posed by such sites. The Department has begun this process by issuing the enclosed Designation.

Under 38 M.R.S.A. § 1362(2), persons who are current or former owners and/or operators of an uncontrolled hazardous substance site ("Owners" or "Operators") as well as persons who arranged for the transport or the handling of hazardous substances which arrived at such a site ("Generators"), or persons who accepted hazardous substances for transport to the Site ("Transporters") are defined as responsible parties ("RPs") regarding that site. Under 38 M.R.S.A. § 1367, each RP is legally liable, individually, to repay all of MEDEP's response costs and to clean up the Site.

I. NOTICE OF POTENTIAL LIABILITY

The MEDEP has received evidence from MCRR that indicates that you may have been one of the former operators of the Site. Specifically, MCRR has identified you as a tenant of the Site who operated car shredding or metal recovery facilities at the Site.

BY WAY OF THIS LETTER, THE DEPARTMENT IS NOTIFYING YOU OF YOUR POTENTIAL LIABILITY WITH RESPECT TO THIS MATTER AND IS REQUESTING THAT YOU PARTICIPATE IN THE RESPONSE ACTIVITIES AT THE SITE.

As discussed above MCRR will shortly begin a Remedial Investigation characterizing the Site and defining the nature and extent of soil, air, surface water and groundwater contamination at the Site.

Following MEDEP's review and approval of the Remedial Investigation Report, MEDEP expects the Responsible Parties to conduct a Feasibility Study ("FS") to evaluate the feasibility of identified remedial actions to remove or contain hazardous substances, pollutants and contaminants at the Site.

After MEDEP selects one or more remedial actions at the Site, the following activities will be required:

- Design and implementation of the remedial action selected and approved by MEDEP for the Site; and
- Operation, maintenance and monitoring of the remedy.

The MEDEP expects that the RPs will conduct these remedial activities and other cleanup activities necessary to protect public health, welfare or the environment.

II. INFORMATION REQUEST

Under 38 M.R.S.A. § 1364(3) the Commissioner of the Department of Environmental Protection may require submission of information or documents that relate to a site where hazardous substances are or were stored or handled. This information or this documentation may be required from any person who the Department has reason to believe may be a Responsible Party.

BY WAY OF THIS LETTER THE DEPARTMENT IS MAKING A FORMAL INFORMATION REQUEST UPON YOU PURSUANT TO 38 M.R.S.A. § 1364(3). COMPLIANCE WITH THIS REQUEST IS MANDATORY.

INSTRUCTIONS

1. You are required to provide a separate narrative response to each and every question and subpart of questions set forth in this Information Request.
2. Precede each answer with the number of the question to which it corresponds.
3. Identify the person(s) answering these questions on behalf of the Respondent.
4. For each and every question contained herein, identify all persons consulted in the preparation of the answer.
5. For each and every question contained herein, identify all documents consulted, examined, or referred to in the preparation of the answer and provide true and accurate copies of all such documents. Indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
6. For each and every question contained herein, if information responsive to this Information Request is not in your possession, custody, or control, then identify the persons from whom such information may be obtained.
7. The information requested herein must be provided even though the Respondent may contend that it includes Confidential Business Information or trade secrets. All Confidential Business Information submitted must be clearly marked on each page, "Confidential Business Information."
8. This request is continuing in nature; therefore, if information or documents not known or not available to you on the date of this Information Request should become known or available to you at a later date, you must supplement your response to the DEP. Moreover, should you find at any time after the submission of this response, that any portion of the submitted information is false or misrepresents the truth, you must notify the DEP of this fact as soon as possible and provide the DEP with a corrected response.
9. Please answer all questions and respond to all requests. Include in your response a notarized affidavit from you or your authorized legal representative stating the following:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry with the person or persons who were directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. A diligent record search has been completed and there has been a diligent interviewing process with present and former employees who may have knowledge of operations, business relationships, contractual agreements, financial arrangements, chemical use, hazardous substance or waste transport, disposal, storage,

treatment and/or other handling methods and locations of such handling methods and any other knowledge of the Site and/or operations relating to this request. All information and documents responsive to the Department of Environmental Protection's Request for Information have been forwarded to the Department. All questions and requests have been responded to fully. I am aware that there are significant penalties, including the possibility of fines and imprisonment, for noncompliance with this request or for knowingly submitting false information or tampering with the information submitted."

10. Your response to this request must be submitted in writing to the following address within thirty (30) days from receipt of this Notice:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Division of Site Remediation
17 State House Station
Augusta, Maine 04333-0017

ATTN: Lynne Cayting, Environmental Specialist

Definitions

The following definitions shall apply to the following words as they appear in this letter:

1. The term "you" or "Respondent" shall mean the addressee of this request, the addressee's officers, managers, employees, contractors, trustees, successors, assigns, and agents.
2. The term "person" as used herein includes, in the plural as well as the singular, any natural person, firm, unincorporated association, partnership, corporation, trust, or other entity.
3. The terms "the Site/s" or "the facility/s" shall mean and include any or all of the following property owned by the MCRR and adjacent property where hazardous substances have come to be located: property described on the Town of Leeds Tax Map 4 as Lot 38.
4. The term "handle" includes store, collect, separate, salvage, process, recycle, reduce, recover, incinerate, dispose of, or treat any materials.
5. The term "hazardous substance" shall mean and include the same definition as contained in 38 M.R.S.A. § 1362(1) and includes any mixtures of such substances with any other substances, including petroleum products.

6. The term "hazardous waste" shall have the same definition as that contained in 38 M.R.S.A. § 1319-O.
7. The term "non-hazardous material" shall mean all material as defined below, excluding hazardous substances and hazardous wastes.
8. The term "materials" shall mean all substances that have been generated, treated, stored, disposed of, or otherwise handled at, or transported to the Site; including, but not limited to, all non-hazardous substances, all hazardous substances, pollutants and contaminants, and hazardous wastes, as defined above.
9. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position, or business.
10. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization (if any), and a brief discussion of its business.
11. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressee, and/or recipient, and the substance or the subject matter.
12. The term "release" has the same definition as contained in CERCLA § 101(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or discharging of barrels, containers, tanks, tank trucks, and other closed receptacles (including tanks and tank trucks) containing any hazardous substance or hazardous waste.
13. The terms "document" and "documents" shall include:
 - (a) writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, receipt, endorsement, check, bank draft, cancelled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and any other conversations including meetings, agreements and the like, diary, calendar, deskpad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photostat, facsimile, or other copy of any documents;
 - (b) microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc, or disc pack;

- (c) any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, disc pack, tape or other type of memory); and
- (d)
 - (i) every copy of each document which is not an exact duplicate of a document which is produced,
 - (ii) every copy which has any writing, figure or notation, annotation or the like of it,
 - (iii) drafts,
 - (iv) attachments to or enclosures with any document, and
 - (v) every document referred to in any other document.
- 14. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
- 15. The term "arrangement" means every separate contract or other agreement between two or more persons.
- 16. The terms "transaction" or "transact" means any sale, transfer, giving, delivery, change in ownership, or change in possession.
- 17. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.

QUESTIONS

- 1. List all environmental licenses and permits including EPA RCRA Identification numbers of the Respondent, if any.
- 2. Identify all persons, including the Respondent's employees, who have knowledge or information about the generation, use, purchase, treatment, storage, disposal or other handling of materials at, or transportation of materials to the Sites.
- 3. In general terms, list all hazardous substances including: metals, PCBs, solvents, paint thinners, degreasers, transformer oils, waste oils, contaminated fuels, and/or sludges handled by you at the Site or not. In general terms, list quantity used and dates of usage for each material. Additionally, list any and all brand names, formulation, and/or laboratory analyses pertaining to the material.

4. Identify all persons, including yourself, who may have arranged for the disposal or treatment or arranged for the transportation for disposal or treatment of materials at or to the Site ("Generators"). In addition, identify:
 - a. the facility from which the materials were shipped;
 - b. the persons with whom the Generators made such arrangements;
 - c. every date on which each Generator, including yourself, made such arrangements;
 - d. the nature, including the chemical content, characteristics, physical state (e.g., solid, liquid) and quantity (volume or weight) of all hazardous substances involved in each arrangement;
 - e. in general terms, the nature and quantity of the non-hazardous substances involved in each such arrangement;
 - f. all tests, analyses, analytical results, or manifests concerning each hazardous substance involved in each such arrangement;
 - g. identify the person who selected the Site as the location at which hazardous substances were to be disposed or treated;
 - h. the amount paid in connection with each such arrangement, the method of payment, and the identity of the persons involved in each arrangement; and
 - i. where the persons identified in g., above, intended to have the hazardous substance involved in each arrangement treated or disposed and all evidence of their intent.
5. Describe the acts or omissions of any person, other than your employees, agents, or those persons with whom you had a contractual relationship that caused the release or threat of release of hazardous substance at the Site(s) and damages relating therefrom and identify such persons. In addition:
 - a. describe all precautions that you took against foreseeable acts or omissions of any such third parties and the consequences that could foreseeably result from such acts or omissions; and
 - b. describe the care you exercised with respect to the hazardous substances found at the Site.
6. Identify and submit copies of all insurance policies held by the Respondent that may cover any costs, expenses, or damages arising from or relating to the discharge or threatened discharge of hazardous substances at the Site. In addition:

- a. identify the insured person;
 - b. state the amount of coverage under each policy;
 - c. state the commencement and expiration dates for each policy;
 - d. describe all efforts taken by the respondent to obtain coverage and/or defense of claims; and
 - e. describe the position taken by the insurance companies or representatives, with respect to such coverage.
7. Identify your company's contact person to whom future correspondence regarding the Site should be sent.
8. Identify the lease or other document authorizing you to use the Site.
9. Describe what business the Respondent operated at the Site.
10. Identify all materials you handled at the Site.
11. Identify all persons who had managed your operations at the Site.
 - a. describe the title and duties of each person identified; and
 - b. identify all persons who managed the handling of materials on Site.
12. Identify all persons who had the authority to control your operations at the Site whether or not they actually managed your operations.
13. Identify all persons who had authority to decide what materials would be brought to the Site.
14. Identify all persons who had authority to decide what materials would be removed from the Site.
15. Identify the origin of drums or containers that may have been a source of any hazardous materials found at the Site.
16. Describe the operation areas at the Site and the purpose of the existing buildings on Site.
17. Describe any filled areas at the Site. Describe the location and size of the filled area, and the contents and any wastes or hazardous substances disposed of in these areas.
18. Describe how automobile gas tanks were handled and where they were disposed.

19. Attach all documents identified in your answers.

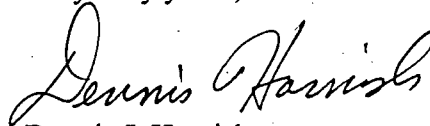
Falsification, tampering or failure to comply with this Request may result in criminal penalties in accordance with 38 M.R.S.A. § 349(3) of a fine of not more than \$10,000 or imprisonment for not more than six (6) months or both. Civil penalties and other remedies may be applied in lieu of or in addition to criminal penalties.

The factual and legal discussions contained in this Letter are intended solely for notification and informational purposes. They are not intended to be and may not be relied upon as a final Departmental position on any matter set forth herein.

If you have any questions regarding this letter, please contact Lynne Cayting in writing at the above-mentioned address or by telephone at (207) 287-2651.

The Department strongly encourages you to submit complete written response within thirty (30) days. Please give this matter your immediate attention.

Very truly yours,



Dennis J. Harnish
Assistant Attorney General

DJH/tt

cc: Mark Hyland, MEDEP
Hank Aho, MEDEP
Lynne Cayting, MEDEP